IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 2186 of 2007(I)

OS.479/2005 of PRL.M.C., KOCHI

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PETITIONER:

AGNES, W/O.LATE SEBASTIAN,
AGED 66 , MAKKIL HOUSE, MOOLAMKUZHI MURI,
RAMESWARAM VILLAGE, KOCHI TALUK.

BY ADV. SRI.D.ANIL KUMAR

RESPONDENTS:

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1. ROSILY, W/O.SUNNO D'CRUZ, AGED 42,
NIKARTHIL, NAZARETH, RAMESWARAM VILLAGE,
KOCHI TALUK.

2. JOHNSON @ FERNANDEZ, S/O. BENEDICT,
AGED 64, NACHIPURAYIDATHIL, NAZARETH, KOCHI-2.

3. VITAS BENEDICT, S/O.BENEDICT, AGED 52,
NACHIPURAYIDATHIL, THEKKUMBHAGAM,
CHERRIKKARAYIL, IRAVIPURAM VILLAGE, KOLLAM TALUK.

4. STELLA DOLLY, W/O. LUIS KALAPPURAYIL,
NACHIPURAYIDATHIL THEKKUMBHAGOM,
CHERRIKARAYIL, IRAVIPURAM VILLAGE, KOLLAM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.2186 OF 2007

DATED THIS THE 22nd DAY OF JANUARY, 2007

JUDGMENT

Petitioner is plaintiff and respondent defendants. Petitioner filed I.A.3192/06, an application for appointment of Commission. Under Ext.P3 order, learned Munsiff appointed a Commission but disallowed the prayer to measure the plaint schedule property holding that, that question has to be decided only after deciding the plea on adverse possession.

2. Learned Counsel appearing for petitioner was heard.

3. Under Ext.P3 order, learned Munsiff has appointed a Commission to value the residential building including the extensions. The prayer for measuring the plaint schedule property was disallowed holding that, that question would arise only on establishing the case of adverse possession, as the title set up by petitioner is by adverse possession. When learned Munisff has already appointed the commissioner, the Commissioner could have been directed to measure the plaint schedule property, as no prejudice will be caused by such a direction.

4. Learned Munsiff is therefore directed to reconsider Ext.P3

and pass appropriate order in accordance with law.

Writ petition is disposed.

M.SASIDHARAN NAMBIAR,JUDGE

Acd